

REMARKS

Claims 1-29 are pending in the application. With this response, no claims are added, canceled or amended.

In the Office Communication dated March 29, 2006, the Examiner stated that the claims are subject to a species election. The examiner stated that the application contains claims directed patentably distinct species, a composition of matter comprising the compound claimed in claim 2. Furthermore, the branched molecule compounds of claim 2 are allegedly independent and structurally distinct from one another.

Claim 1 is directed to a composition of matter for the active structure MAP-S wherein S is a substrate and MAP is selected from compounds of formula: $(R)_{n+1}-(Z)_n-X-$. Claim 2 is directed to a composition of matter for the active structure MAP-S wherein S is a substrate and MAP is selected from compounds of formula: $(R)_{n+1}-(Z)_n-X-$ where n is selected from 1, 3, 5, 7 or 15 to produce four different branched structures. These four branched structures each contain the components R, Z, and X. The restriction requirement imposes an improper election of species that are recited in Markush-type claims.

The restriction requirement imposed in the Office Action improperly identifies particular *species* that are recited in Markush-type claims, which in turn are further connected by generic linking claims, as separate inventions. Applicants respectfully submit that any restriction among the members of the Markush groups within the claims should only be made provisionally. MPEP § 803.02 which addresses restriction practice with respect to Markush-type claims, clearly sets forth that the examiner may only require a *provisional* election of a single species prior to examination on the merits. The provisional election would be given effect in the event that the Markush-type claim was found not to be allowable. Following election, the Markush-type claim would be examined fully with respect to the elected species and further to the extent necessary to determine patentability. If the Markush-type claim were not allowable over the prior art, examination would be limited to the Markush-type claim and claims to the elected species, with claims drawn to species patentably distinct from the elected species held withdrawn from further consideration. However, should no prior art be found that anticipates or renders obvious the elected species, the search of the Markush-type claim would then be extended to the full scope of the generic claims.

The MPEP provides an example in the case of an application with a Markush-type claim drawn to the compound C-R, wherein R is a radical selected from the group consisting of A, B, C, D, and E. With such a claim, the examiner may require a *provisional* election of a single species, CA, CB, CC, CD, or CE. The Markush-type claim is then examined fully with respect to the elected species and any species considered to be clearly unpatentable over the elected species. If, on examination the elected species is found to be anticipated or rendered obvious by prior art, the Markush-type claim and claims to the elected species would be rejected, and claims to the non-elected species would be held withdrawn from further consideration. On the other hand, should no prior art be found that anticipates or renders obvious the elected species, the search of the Markush-type claim would then be extended.

As discussed above, a composition of matter for the active structure MAP-S wherein S is a substrate and MAP is selected from compounds of formula: $(R)_{n+1}-(Z)_n-X-$ as in Claims 1 and 2. The composition is referred to in several layers of dependent claims, 3 to 29, which sets forth specific examples of compounds of formula: $(R)_{n+1}-(Z)_n-X-$. More than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims within one application. See 37 C.F.R. § 1.141. The compounds set forth claims 1 and 2 and in dependent claims 3 to 29 are a reasonable number of species of the generic claims 1 and 2.

The generic compound defined by Claims 1 and 2 is a single claimed invention under 35 § U.S.C. 121. The further elements added in claim 2 and dependent Claims 3 to 29 further define the invention set forth in Claims 1 and 2. It is respectfully submitted that these claims, and the groups of compounds set forth therein, do not define independent inventions. The specific compounds set forth in claims 2 to 29 act by the same mode of operation and are each capable of use for the same function. These specific compounds act as compositions of matter for the active structure MAP-S. The function of the MAP-S compounds is to act as anti-inflammatory agents, growth factor agents, adhesion barrier agents, anti-thrombogenic agents, growth factor agents, adhesion barrier agents or combinations thereof.

Applicants respectfully request the examiner to reconsider and to consider the species election only a provisional election of species for the purpose of carrying out the search. Nonetheless, to be fully responsive to the restriction requirement, applicants elect, *with*

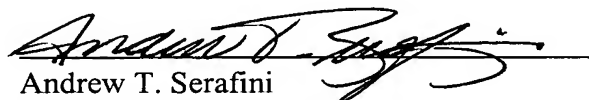
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traverse, a species which is a compound of (NH₂-Gly-Thr-Pro-Gly-Pro-Gln-Gly-Ile-Ala-Gly-Gln-Arg-Gly-Val-Val)₄-(Lys)₂-Lys-β-Ala-COOH. (MAP4). Claims 1-11, 20 to 29 read on the elected species.

In view of the above, applicants respectfully request that the restriction under 35 U.S.C. § 121 be withdrawn and examination of the application on the merits, on the basis, initially, of the elected species commence. Should the examiner consider the elected species allowable, consideration of the full generic scope of pending Claims 1 to 29 is respectfully requested.

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Andrew T. Serafini
Registration No. 41,303

Woodcock Washburn LLP
One Liberty Place - 46th Floor
Philadelphia PA 19103
Telephone: (215) 568-3100
Facsimile: (215) 568-3439